

Union Calendar No. 232

111TH CONGRESS
2^D SESSION

H. R. 3254

[Report No. 111-395]

To approve the Taos Pueblo Indian Water Rights Settlement Agreement,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2009

Mr. LUJÁN introduced the following bill; which was referred to the Committee
on Natural Resources

JANUARY 12, 2010

Additional sponsor: Mr. HEINRICH

JANUARY 12, 2010

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 17, 2009]

A BILL

To approve the Taos Pueblo Indian Water Rights Settlement
Agreement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Taos Pueblo Indian Water Rights Settlement Act”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 7 *Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

Sec. 3. Definitions.

Sec. 4. Pueblo rights.

Sec. 5. Pueblo water infrastructure and watershed enhancement.

Sec. 6. Taos Pueblo Water Development Fund.

Sec. 7. Marketing.

Sec. 8. Mutual-Benefit Projects.

Sec. 9. San Juan-Chama Project contracts.

Sec. 10. Authorizations, ratifications, confirmations, and conditions precedent.

Sec. 11. Waivers and releases.

Sec. 12. Interpretation and enforcement.

Sec. 13. Disclaimer.

8 **SEC. 2. PURPOSE.**

9 *The purposes of this Act are—*

10 (1) *to approve, ratify, and confirm the Taos*
 11 *Pueblo Indian Water Rights Settlement Agreement;*

12 (2) *to authorize and direct the Secretary to exe-*
 13 *cute the Settlement Agreement and to perform all ob-*
 14 *ligations of the Secretary under the Settlement Agree-*
 15 *ment and this Act; and*

16 (3) *to authorize all actions and appropriations*
 17 *necessary for the United States to meet its obligations*
 18 *under the Settlement Agreement and this Act.*

1 **SEC. 3. DEFINITIONS.**

2 *In this Act:*

3 (1) *ELIGIBLE NON-PUEBLO ENTITIES.*—*The term*
 4 *“Eligible Non-Pueblo Entities” means the Town of*
 5 *Taos, El Prado Water and Sanitation District*
 6 *(“EPWSD”), and the New Mexico Department of Fi-*
 7 *nance and Administration Local Government Divi-*
 8 *sion on behalf of the Acequia Madre del Rio Lucero*
 9 *y del Arroyo Seco, the Acequia Madre del Prado, the*
 10 *Acequia del Monte, the Acequia Madre del Rio*
 11 *Chiquito, the Upper Ranchitos Mutual Domestic*
 12 *Water Consumers Association, the Upper Arroyo*
 13 *Hondo Mutual Domestic Water Consumers Associa-*
 14 *tion, and the Llano Quemado Mutual Domestic Water*
 15 *Consumers Association.*

16 (2) *ENFORCEMENT DATE.*—*The term “Enforce-*
 17 *ment Date” means the date upon which the Secretary*
 18 *publishes the notice required by section 10(f)(1).*

19 (3) *MUTUAL-BENEFIT PROJECTS.*—*The term*
 20 *“Mutual-Benefit Projects” means the projects de-*
 21 *scribed and identified in articles 6 and 10.1 of the*
 22 *Settlement Agreement.*

23 (4) *PARTIAL FINAL DECREE.*—*The term “Partial*
 24 *Final Decree” means the Decree entered in New Mex-*
 25 *ico v. Abeyta and New Mexico v. Arellano, Civil Nos.*
 26 *7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S.*

1 *D.N.M) (consolidated), for the resolution of the Pueb-*
2 *lo's water right claims and which is substantially in*
3 *the form agreed to by the Parties and attached to the*
4 *Settlement Agreement as Attachment 5.*

5 (5) *PARTIES.—The term “Parties” means the*
6 *Parties to the Settlement Agreement, as identified in*
7 *article 1 of the Settlement Agreement.*

8 (6) *PUEBLO.—The term “Pueblo” means the*
9 *Taos Pueblo, a sovereign Indian tribe duly recognized*
10 *by the United States of America.*

11 (7) *PUEBLO LANDS.—The term “Pueblo lands”*
12 *means those lands located within the Taos Valley to*
13 *which the Pueblo, or the United States in its capacity*
14 *as trustee for the Pueblo, holds title subject to Federal*
15 *law limitations on alienation. Such lands include*
16 *Tracts A, B, and C, the Pueblo's land grant, the Blue*
17 *Lake Wilderness Area, and the Tenorio and Karavas*
18 *Tracts and are generally depicted in Attachment 2 to*
19 *the Settlement Agreement.*

20 (8) *SAN JUAN-CHAMA PROJECT.—The term “San*
21 *Juan-Chama Project” means the Project authorized*
22 *by section 8 of the Act of June 13, 1962 (76 Stat. 96,*
23 *97), and the Act of April 11, 1956 (70 Stat. 105).*

24 (9) *SECRETARY.—The term “Secretary” means*
25 *the Secretary of the Interior.*

1 (10) *SETTLEMENT AGREEMENT.*—*The term “Set-*
 2 *tlement Agreement” means the contract dated March*
 3 *31, 2006, between and among—*

4 *(A) the United States, acting solely in its*
 5 *capacity as trustee for Taos Pueblo;*

6 *(B) the Taos Pueblo, on its own behalf;*

7 *(C) the State of New Mexico;*

8 *(D) the Taos Valley Acequia Association*
 9 *and its 55 member ditches (“TVAA”);*

10 *(E) the Town of Taos;*

11 *(F) EPWSD; and*

12 *(G) the 12 Taos area Mutual Domestic*
 13 *Water Consumers Associations (“MDWCAs”), as*
 14 *amended to conform with this Act.*

15 (11) *STATE ENGINEER.*—*The term “State Engi-*
 16 *neer” means the New Mexico State Engineer.*

17 (12) *TAOS VALLEY.*—*The term “Taos Valley”*
 18 *means the geographic area depicted in Attachment 4*
 19 *of the Settlement Agreement.*

20 **SEC. 4. PUEBLO RIGHTS.**

21 (a) *IN GENERAL.*—*Those rights to which the Pueblo*
 22 *is entitled under the Partial Final Decree shall be held in*
 23 *trust by the United States on behalf of the Pueblo and shall*
 24 *not be subject to forfeiture, abandonment, or permanent*
 25 *alienation.*

1 (b) *SUBSEQUENT ACT OF CONGRESS.*—*The Pueblo*
 2 *shall not be denied all or any part of its rights held in*
 3 *trust absent its consent unless such rights are explicitly ab-*
 4 *rogated by an Act of Congress hereafter enacted.*

5 **SEC. 5. PUEBLO WATER INFRASTRUCTURE AND WATER-**
 6 **SHED ENHANCEMENT.**

7 (a) *IN GENERAL.*—*The Secretary, acting through the*
 8 *Commissioner of Reclamation, shall provide grants and*
 9 *technical assistance to the Pueblo on a nonreimbursable*
 10 *basis to—*

11 (1) *plan, permit, design, engineer, construct, re-*
 12 *construct, replace, or rehabilitate water production,*
 13 *treatment, and delivery infrastructure;*

14 (2) *restore, preserve, and protect the environment*
 15 *associated with the Buffalo Pasture area; and*

16 (3) *protect and enhance watershed conditions.*

17 (b) *AVAILABILITY OF GRANTS.*—*Upon the Enforcement*
 18 *Date, all amounts appropriated pursuant to section*
 19 *10(c)(1) or made available from other authorized sources,*
 20 *shall be available in grants to the Pueblo after the require-*
 21 *ments of subsection (c) have been met.*

22 (c) *PLAN.*—*The Secretary shall provide financial as-*
 23 *sistance pursuant to subsection (a) upon the Pueblo's sub-*
 24 *mittal of a plan that identifies the projects to be imple-*
 25 *mented consistent with the purposes of this section and de-*

1 *scribes how such projects are consistent with the Settlement*
 2 *Agreement.*

3 *(d) EARLY FUNDS.—Notwithstanding subsection (b),*
 4 *\$10,000,000 of the monies authorized to be appropriated*
 5 *pursuant to section 10(c)(1)—*

6 *(1) shall be made available in grants to the*
 7 *Pueblo by the Secretary upon appropriation or avail-*
 8 *ability of the funds from other authorized sources; and*

9 *(2) shall be distributed by the Secretary to the*
 10 *Pueblo on receipt by the Secretary from the Pueblo of*
 11 *a written notice, a Tribal Council resolution that de-*
 12 *scribes the purposes under subsection (a) for which*
 13 *the monies will be used, and a plan under subsection*
 14 *(c) for this portion of the funding.*

15 **SEC. 6. TAOS PUEBLO WATER DEVELOPMENT FUND.**

16 *(a) ESTABLISHMENT.—There is established in the*
 17 *Treasury of the United States a fund to be known as the*
 18 *“Taos Pueblo Water Development Fund” (hereinafter,*
 19 *“Fund”) to be used to pay or reimburse costs incurred by*
 20 *the Pueblo for—*

21 *(1) acquiring water rights;*

22 *(2) planning, permitting, designing, engineering,*
 23 *constructing, reconstructing, replacing, rehabilitating,*
 24 *operating, or repairing water production, treatment*

1 *or delivery infrastructure, on-farm improvements, or*
2 *wastewater infrastructure;*

3 *(3) restoring, preserving and protecting the Buf-*
4 *falo Pasture, including planning, permitting, design-*
5 *ing, engineering, constructing, operating, managing*
6 *and replacing the Buffalo Pasture Recharge Project;*

7 *(4) administering the Pueblo’s water rights ac-*
8 *quisition program and water management and ad-*
9 *ministration system; and*

10 *(5) for watershed protection and enhancement,*
11 *support of agriculture, water-related Pueblo commu-*
12 *nity welfare and economic development, and costs re-*
13 *lated to the negotiation, authorization, and imple-*
14 *mentation of the Settlement Agreement.*

15 *(b) MANAGEMENT OF THE FUND.—The Secretary shall*
16 *manage the Fund, invest amounts in the Fund, and make*
17 *monies available from the Fund for distribution to the*
18 *Pueblo consistent with the American Indian Trust Fund*
19 *Management Reform Act of 1994 (25 U.S.C. 4001, et seq.)*
20 *(hereinafter, “Trust Fund Reform Act”), this Act, and the*
21 *Settlement Agreement.*

22 *(c) INVESTMENT OF THE FUND.—Upon the Enforce-*
23 *ment Date, the Secretary shall invest amounts in the Fund*
24 *in accordance with—*

1 (1) *the Act of April 1, 1880 (21 Stat. 70, ch. 41,*
2 *25 U.S.C. 161);*

3 (2) *the first section of the Act of June 24, 1938*
4 *(52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and*

5 (3) *the American Indian Trust Fund Manage-*
6 *ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).*

7 (d) *AVAILABILITY OF AMOUNTS FROM THE FUND.—*
8 *Upon the Enforcement Date, all monies deposited in the*
9 *Fund pursuant to section 10(c)(2) or made available from*
10 *other authorized sources shall be available to the Pueblo for*
11 *expenditure or withdrawal after the requirements of sub-*
12 *section (e) have been met.*

13 (e) *EXPENDITURES AND WITHDRAWAL.—*

14 (1) *TRIBAL MANAGEMENT PLAN.—*

15 (A) *IN GENERAL.—The Pueblo may with-*
16 *draw all or part of the Fund on approval by the*
17 *Secretary of a tribal management plan as de-*
18 *scribed in the Trust Fund Reform Act.*

19 (B) *REQUIREMENTS.—In addition to the*
20 *requirements under the Trust Fund Reform Act,*
21 *the tribal management plan shall require that*
22 *the Pueblo spend any funds in accordance with*
23 *the purposes described in subsection (a).*

24 (2) *ENFORCEMENT.—The Secretary may take ju-*
25 *dicial or administrative action to enforce the require-*

1 *ment that monies withdrawn from the Fund are used*
2 *for the purposes specified in subsection (a).*

3 (3) *LIABILITY.*—*If the Pueblo exercises the right*
4 *to withdraw monies from the Fund, neither the Sec-*
5 *retary nor the Secretary of the Treasury shall retain*
6 *any liability for the expenditure or investment of the*
7 *monies withdrawn.*

8 (4) *EXPENDITURE PLAN.*—

9 (A) *IN GENERAL.*—*The Pueblo shall submit*
10 *to the Secretary for approval an expenditure*
11 *plan for any portions of the funds made avail-*
12 *able under this Act that the Pueblo does not*
13 *withdraw under paragraph (1)(A).*

14 (B) *DESCRIPTION.*—*The expenditure plan*
15 *shall describe the manner in which, and the pur-*
16 *poses for which, amounts remaining in the Fund*
17 *will be used.*

18 (C) *APPROVAL.*—*On receipt of an expendi-*
19 *ture plan under subparagraph (A), the Secretary*
20 *shall approve the plan if the Secretary deter-*
21 *mines that the plan is reasonable and consistent*
22 *with this Act.*

23 (5) *ANNUAL REPORT.*—*The Pueblo shall submit*
24 *to the Secretary an annual report that describes all*

1 *expenditures from the Fund during the year covered*
2 *by the report.*

3 (f) *FUNDS AVAILABLE UPON APPROPRIATION.*—*Not-*
4 *withstanding subsection (d), \$15,000,000 of the monies au-*
5 *thorized to be appropriated pursuant to section 10(c)(2)—*

6 (1) *shall be available upon appropriation or*
7 *made available from other authorized sources for the*
8 *Pueblo's acquisition of water rights pursuant to Arti-*
9 *cle 5.1.1.2.3 of the Settlement Agreement, the Buffalo*
10 *Pasture Recharge Project, implementation of the*
11 *Pueblo's water rights acquisition program and water*
12 *management and administration system, the design,*
13 *planning, and permitting of water or wastewater in-*
14 *frastructure eligible for funding under sections 5 or 6,*
15 *or costs related to the negotiation, authorization, and*
16 *implementation of the Settlement Agreement; and*

17 (2) *shall be distributed by the Secretary to the*
18 *Pueblo on receipt by the Secretary from the Pueblo of*
19 *a written notice and a Tribal Council resolution that*
20 *describes the purposes under paragraph (1) for which*
21 *the monies will be used.*

22 (g) *NO PER CAPITA DISTRIBUTIONS.*—*No part of the*
23 *Fund shall be distributed on a per capita basis to members*
24 *of the Pueblo.*

1 **SEC. 7. MARKETING.**

2 (a) *PUEBLO WATER RIGHTS.*—Subject to the approval
3 of the Secretary in accordance with subsection (e), the Pueb-
4 lo may market water rights secured to it under the Settle-
5 ment Agreement and Partial Final Decree, provided that
6 such marketing is in accordance with this section.

7 (b) *PUEBLO CONTRACT RIGHTS TO SAN JUAN-CHAMA*
8 *PROJECT WATER.*—Subject to the approval of the Secretary
9 in accordance with subsection (e), the Pueblo may sub-
10 contract water made available to the Pueblo under the con-
11 tract authorized under section 9(b)(1)(A) to third parties
12 to supply water for use within or without the Taos Valley,
13 provided that the delivery obligations under such sub-
14 contract are not inconsistent with the Secretary's existing
15 San Juan-Chama Project obligations and such subcontract
16 is in accordance with this section.

17 (c) *LIMITATION.*—

18 (1) *IN GENERAL.*—Diversion or use of water off
19 Pueblo lands pursuant to Pueblo water rights or
20 Pueblo contract rights to San Juan-Chama Project
21 water shall be subject to and not inconsistent with the
22 same requirements and conditions of State law, any
23 applicable Federal law, and any applicable interstate
24 compact as apply to the exercise of water rights or
25 contract rights to San Juan-Chama Project water
26 held by non-Federal, non-Indian entities, including

1 *all applicable State Engineer permitting and report-*
2 *ing requirements.*

3 (2) *EFFECT ON WATER RIGHTS.*—*Such diversion*
4 *or use off Pueblo lands under paragraph (1) shall not*
5 *impair water rights or increase surface water deple-*
6 *tions within the Taos Valley.*

7 (d) *MAXIMUM TERM.*—

8 (1) *IN GENERAL.*—*The maximum term of any*
9 *water use lease or subcontract, including all renewals,*
10 *shall not exceed 99 years in duration.*

11 (2) *ALIENATION OF RIGHTS.*—*The Pueblo shall*
12 *not permanently alienate any rights it has under the*
13 *Settlement Agreement, the Partial Final Decree, and*
14 *this Act.*

15 (e) *APPROVAL OF SECRETARY.*—*The Secretary shall*
16 *approve or disapprove any lease or subcontract submitted*
17 *by the Pueblo for approval not later than—*

18 (1) *180 days after submission; or*

19 (2) *60 days after compliance, if required, with*
20 *section 102(2)(C) of the National Environmental Pol-*
21 *icy Act of 1969 (42 U.S.C. 4332(2)(C)), or any other*
22 *requirement of Federal law, whichever is later, pro-*
23 *vided that no Secretarial approval shall be required*
24 *for any water use lease with a term of less than 7*
25 *years.*

1 (f) *NO FORFEITURE OR ABANDONMENT.*—*The nonuse*
 2 *by a lessee or subcontractor of the Pueblo of any right to*
 3 *which the Pueblo is entitled under the Partial Final Decree*
 4 *shall in no event result in a forfeiture, abandonment, relin-*
 5 *quishment, or other loss of all or any part of those rights.*

6 (g) *NO PREEMPTION.*—

7 (1) *IN GENERAL.*—*The approval authority of the*
 8 *Secretary provided under subsection (e) shall not*
 9 *amend, construe, supersede, or preempt any State or*
 10 *Federal law, interstate compact, or international*
 11 *treaty that pertains to the Colorado River, the Rio*
 12 *Grande, or any of their tributaries, including the ap-*
 13 *propriation, use, development, storage, regulation, al-*
 14 *location, conservation, exportation, or quantity of*
 15 *those waters.*

16 (2) *APPLICABLE LAW.*—*The provisions of section*
 17 *2116 of the Revised Statutes (25 U.S.C. 177) shall not*
 18 *apply to any water made available under the Settle-*
 19 *ment Agreement.*

20 (h) *NO PREJUDICE.*—*Nothing in this Act shall be con-*
 21 *strued to establish, address, prejudice, or prevent any party*
 22 *from litigating whether or to what extent any applicable*
 23 *State law, Federal law, or interstate compact does or does*
 24 *not permit, govern, or apply to the use of the Pueblo's water*
 25 *outside of New Mexico.*

1 **SEC. 8. MUTUAL-BENEFIT PROJECTS.**

2 (a) *IN GENERAL.*—Upon the Enforcement Date, the
3 Secretary, acting through the Commissioner of Reclama-
4 tion, shall provide financial assistance in the form of grants
5 on a nonreimbursable basis to Eligible Non-Pueblo Entities
6 to plan, permit, design, engineer, and construct the Mutual-
7 Benefit Projects in accordance with the Settlement Agree-
8 ment—

9 (1) *to minimize adverse impacts on the Pueblo's*
10 *water resources by moving future non-Indian ground*
11 *water pumping away from the Pueblo's Buffalo Pas-*
12 *ture; and*

13 (2) *to implement the resolution of a dispute over*
14 *the allocation of certain surface water flows between*
15 *the Pueblo and non-Indian irrigation water right*
16 *owners in the community of Arroyo Seco Arriba.*

17 (b) *COST-SHARING.*—

18 (1) *FEDERAL SHARE.*—The Federal share of the
19 total cost of planning, designing, and constructing the
20 Mutual-Benefit Projects authorized in subsection (a)
21 shall be 75 percent and shall be nonreimbursable.

22 (2) *NON-FEDERAL SHARE.*—The non-Federal
23 share of the total cost of planning, designing, and
24 constructing the Mutual-Benefit Projects shall be 25
25 percent and may be in the form of in-kind contribu-
26 tions, including the contribution of any valuable asset

1 or service that the Secretary determines would sub-
 2 stantially contribute to completing the Mutual-Benefit
 3 Projects.

4 **SEC. 9. SAN JUAN-CHAMA PROJECT CONTRACTS.**

5 (a) *IN GENERAL.*—Contracts issued under this section
 6 shall be in accordance with this Act and the Settlement
 7 Agreement.

8 (b) *CONTRACTS FOR SAN JUAN-CHAMA PROJECT*
 9 *WATER.*—

10 (1) *IN GENERAL.*—The Secretary shall enter into
 11 3 repayment contracts by not later than 180 days
 12 after the date of enactment of this Act, for the delivery
 13 of San Juan-Chama Project water in the following
 14 amounts:

15 (A) 2,215 acre-feet/annum to the Pueblo.

16 (B) 366 acre-feet/annum to the Town of
 17 Taos.

18 (C) 40 acre-feet/annum to EPWSD.

19 (2) *REQUIREMENTS.*—Each such contract shall
 20 provide that if the conditions precedent set forth in
 21 section 10(f)(2) have not been fulfilled by December
 22 31, 2016, the contract shall expire on that date.

23 (3) *APPLICABLE LAW.*—Public Law 87–483 (76
 24 Stat. 97) applies to the contracts entered into under
 25 paragraph (1) and no preference shall be applied as

1 *a result of section 4(a) with regard to the delivery or*
 2 *distribution of San Juan-Chama Project water or the*
 3 *management or operation of the San Juan-Chama*
 4 *Project.*

5 *(c) WAIVER.—With respect to the contract authorized*
 6 *and required by subsection (b)(1)(A) and notwithstanding*
 7 *the provisions of Public Law 87–483 (76 Stat. 96) or any*
 8 *other provision of law—*

9 *(1) the Secretary shall waive the entirety of the*
 10 *Pueblo’s share of the construction costs, both principal*
 11 *and the interest, for the San Juan-Chama Project and*
 12 *pursuant to that waiver, the Pueblo’s share of all con-*
 13 *struction costs for the San Juan-Chama Project, in-*
 14 *clusive of both principal and interest shall be nonre-*
 15 *imbursable; and*

16 *(2) the Secretary’s waiver of the Pueblo’s share*
 17 *of the construction costs for the San Juan-Chama*
 18 *Project will not result in an increase in the pro rata*
 19 *shares of other San Juan-Chama Project water con-*
 20 *tractors, but such costs shall be absorbed by the*
 21 *United States Treasury or otherwise appropriated to*
 22 *the Department of the Interior.*

23 **SEC. 10. AUTHORIZATIONS, RATIFICATIONS, CONFIRMA-**
 24 **TIONS, AND CONDITIONS PRECEDENT.**

25 *(a) RATIFICATION.—*

1 (1) *IN GENERAL.*—*Except to the extent that any*
 2 *provision of the Settlement Agreement conflicts with*
 3 *any provision of this Act, the Settlement Agreement*
 4 *is authorized, ratified, and confirmed.*

5 (2) *AMENDMENTS.*—*To the extent amendments*
 6 *are executed to make the Settlement Agreement con-*
 7 *sistent with this Act, such amendments are also au-*
 8 *thorized, ratified, and confirmed.*

9 (b) *EXECUTION OF SETTLEMENT AGREEMENT.*—*To*
 10 *the extent that the Settlement Agreement does not conflict*
 11 *with this Act, the Secretary shall execute the Settlement*
 12 *Agreement, including all exhibits to the Settlement Agree-*
 13 *ment requiring the signature of the Secretary and any*
 14 *amendments necessary to make the Settlement Agreement*
 15 *consistent with this Act, after the Pueblo has executed the*
 16 *Settlement Agreement and any such amendments.*

17 (c) *AUTHORIZATION OF APPROPRIATIONS.*—

18 (1) *TAOS PUEBLO INFRASTRUCTURE AND WATER-*
 19 *SHED FUND.*—*There is authorized to be appropriated*
 20 *to the Secretary to provide grants pursuant to section*
 21 *5, \$30,000,000, as adjusted under paragraph (4), for*
 22 *the period of fiscal years 2010 through 2016.*

23 (2) *TAOS PUEBLO WATER DEVELOPMENT*
 24 *FUND.*—*There is authorized to be appropriated to the*
 25 *Taos Pueblo Water Development Fund, established at*

1 *section 6(a), \$58,000,000, as adjusted under para-*
 2 *graph (4), for the period of fiscal years 2010 through*
 3 *2016.*

4 (3) *MUTUAL-BENEFIT PROJECTS FUNDING.—*
 5 *There is further authorized to be appropriated to the*
 6 *Secretary to provide grants pursuant to section 8, a*
 7 *total of \$33,000,000, as adjusted under paragraph*
 8 *(4), for the period of fiscal years 2010 through 2016.*

9 (4) *ADJUSTMENTS TO AMOUNTS AUTHORIZED.—*
 10 *The amounts authorized to be appropriated under*
 11 *paragraphs (1) through (3) shall be adjusted by such*
 12 *amounts as may be required by reason of changes*
 13 *since April 1, 2007, in construction costs, as indi-*
 14 *cated by engineering cost indices applicable to the*
 15 *types of construction or rehabilitation involved.*

16 (5) *DEPOSIT IN FUND.—Except for the funds to*
 17 *be provided to the Pueblo pursuant to section 5(d),*
 18 *the Secretary shall deposit the funds made available*
 19 *pursuant to paragraphs (1) and (3) into a Taos Set-*
 20 *tlement Fund to be established within the Treasury of*
 21 *the United States so that such funds may be made*
 22 *available to the Pueblo and the Eligible Non-Pueblo*
 23 *Entities upon the Enforcement Date as set forth in*
 24 *sections 5(b) and 8(a).*

1 (d) *AUTHORITY OF THE SECRETARY.*—*The Secretary*
2 *is authorized to enter into such agreements and to take such*
3 *measures as the Secretary may deem necessary or appro-*
4 *priate to fulfill the intent of the Settlement Agreement and*
5 *this Act.*

6 (e) *ENVIRONMENTAL COMPLIANCE.*—

7 (1) *EFFECT OF EXECUTION OF SETTLEMENT*
8 *AGREEMENT.*—*The Secretary’s execution of the Settle-*
9 *ment Agreement shall not constitute a major Federal*
10 *action under the National Environmental Policy Act*
11 *of 1969 (42 U.S.C. 4321 et seq.).*

12 (2) *COMPLIANCE WITH ENVIRONMENTAL LAWS.*—
13 *In carrying out this Act, the Secretary shall comply*
14 *with each law of the Federal Government relating to*
15 *the protection of the environment, including—*

16 (A) *the National Environmental Policy Act*
17 *of 1969 (42 U.S.C. 4321 et seq.); and*

18 (B) *the Endangered Species Act of 1973 (16*
19 *U.S.C. 1531 et seq.).*

20 (f) *CONDITIONS PRECEDENT AND SECRETARIAL FIND-*
21 *ING.*—

22 (1) *IN GENERAL.*—*Upon the fulfillment of the*
23 *conditions precedent described in paragraph (2), the*
24 *Secretary shall publish in the Federal Register a*

1 *statement of finding that the conditions have been ful-*
2 *filled.*

3 (2) *CONDITIONS.—The conditions precedent re-*
4 *ferred to in paragraph (1) are the following:*

5 (A) *The President has signed into law the*
6 *Taos Pueblo Indian Water Rights Settlement*
7 *Act.*

8 (B) *To the extent that the Settlement Agree-*
9 *ment conflicts with this Act, the Settlement*
10 *Agreement has been revised to conform with this*
11 *Act.*

12 (C) *The Settlement Agreement, so revised,*
13 *including waivers and releases pursuant to sec-*
14 *tion 11, has been executed by the Parties and the*
15 *Secretary prior to the Parties' motion for entry*
16 *of the Partial Final Decree.*

17 (D) *Congress has fully appropriated or the*
18 *Secretary has provided from other authorized*
19 *sources all funds authorized by paragraphs (1)*
20 *through (3) of subsection (c) so that the entire*
21 *amounts so authorized have been previously pro-*
22 *vided to the Pueblo pursuant to sections 5 and*
23 *6, or placed in the Taos Pueblo Water Develop-*
24 *ment Fund or the Taos Settlement Fund as di-*
25 *rected in subsection (c).*

1 (E) *The Legislature of the State of New*
2 *Mexico has fully appropriated the funds for the*
3 *State contributions as specified in the Settlement*
4 *Agreement, and those funds have been deposited*
5 *in appropriate accounts.*

6 (F) *The State of New Mexico has enacted*
7 *legislation that amends NMSA 1978, section 72–*
8 *6–3 to state that a water use due under a water*
9 *right secured to the Pueblo under the Settlement*
10 *Agreement or the Partial Final Decree may be*
11 *leased for a term, including all renewals, not to*
12 *exceed 99 years, provided that this condition*
13 *shall not be construed to require that said*
14 *amendment state that any State law based water*
15 *rights acquired by the Pueblo or by the United*
16 *States on behalf of the Pueblo may be leased for*
17 *said term.*

18 (G) *A Partial Final Decree that sets forth*
19 *the water rights and contract rights to water to*
20 *which the Pueblo is entitled under the Settlement*
21 *Agreement and this Act and that substantially*
22 *conforms to the Settlement Agreement and At-*
23 *tachment 5 thereto has been approved by the*
24 *Court and has become final and nonappealable.*

1 (g) *ENFORCEMENT DATE.*—*The Settlement Agreement*
2 *shall become enforceable, and the waivers and releases exe-*
3 *cuted pursuant to section 11 and the limited waiver of sov-*
4 *ereign immunity set forth in section 12(a) shall become ef-*
5 *fective, as of the date that the Secretary publishes the notice*
6 *required by subsection (f)(1).*

7 (h) *EXPIRATION DATE.*—

8 (1) *IN GENERAL.*—*If all of the conditions prece-*
9 *dent described in section (f)(2) have not been fulfilled*
10 *by December 31, 2016, the Settlement Agreement shall*
11 *be null and void, the waivers and releases executed*
12 *pursuant to section 11 and the sovereign immunity*
13 *waivers in section 12(a) shall not become effective,*
14 *and any unexpended Federal funds, together with any*
15 *income earned thereon, and title to any property ac-*
16 *quired or constructed with expended Federal funds,*
17 *shall be returned to the Federal Government, unless*
18 *otherwise agreed to by the Parties in writing and ap-*
19 *proved by Congress.*

20 (2) *EXCEPTION.*—*Notwithstanding subsection*
21 *(h)(1) or any other provision of law, any unexpended*
22 *Federal funds, together with any income earned there-*
23 *on, made available under sections 5(d) and 6(f) and*
24 *title to any property acquired or constructed with ex-*

1 *pended Federal funds made available under sections*
 2 *5(d) and 6(f) shall be retained by the Pueblo.*

3 (3) *RIGHT TO SET-OFF.*—*In the event the condi-*
 4 *tions precedent set forth in subsection (f)(2) have not*
 5 *been fulfilled by December 31, 2016, the United States*
 6 *shall be entitled to set off any funds expended or with-*
 7 *drawn from the amount appropriated pursuant to*
 8 *paragraphs (1) and (2) of subsection (c) or made*
 9 *available from other authorized sources, together with*
 10 *any interest accrued, against any claims asserted by*
 11 *the Pueblo against the United States relating to water*
 12 *rights in the Taos Valley.*

13 **SEC. 11. WAIVERS AND RELEASES.**

14 (a) *CLAIMS BY THE PUEBLO AND THE UNITED*
 15 *STATES.*—*In return for recognition of the Pueblo’s water*
 16 *rights and other benefits, including but not limited to the*
 17 *commitments by non-Pueblo parties, as set forth in the Set-*
 18 *tlement Agreement and this Act, the Pueblo, on behalf of*
 19 *itself and its members, and the United States acting in its*
 20 *capacity as trustee for the Pueblo are authorized to execute*
 21 *a waiver and release of claims against the parties to New*
 22 *Mexico v. Abeyta and New Mexico v. Arellano, Civil Nos.*
 23 *7896–BB (U.S. 6 D.N.M.) and 7939–BB (U.S. D.N.M.)*
 24 *(consolidated) from—*

1 (1) *all claims for water rights in the Taos Valley*
2 *that the Pueblo, or the United States acting in its ca-*
3 *capacity as trustee for the Pueblo, asserted, or could*
4 *have asserted, in any proceeding, including but not*
5 *limited to in New Mexico v. Abeyta and New Mexico*
6 *v. Arellano, Civil Nos. 7896–BB (U.S.6 D.N.M.) and*
7 *7939–BB (U.S. D.N.M.) (consolidated), up to and in-*
8 *cluding the Enforcement Date, except to the extent*
9 *that such rights are recognized in the Settlement*
10 *Agreement or this Act;*

11 (2) *all claims for water rights, whether for con-*
12 *sumptive or nonconsumptive use, in the Rio Grande*
13 *mainstream or its tributaries that the Pueblo, or the*
14 *United States acting in its capacity as trustee for the*
15 *Pueblo, asserted or could assert in any water rights*
16 *adjudication proceedings except those claims based on*
17 *Pueblo or United States ownership of lands or water*
18 *rights acquired after the Enforcement Date, provided*
19 *that nothing in this paragraph shall prevent the*
20 *Pueblo or the United States from fully participating*
21 *in the inter se phase of any such water rights adju-*
22 *dication proceedings;*

23 (3) *all claims for damages, losses or injuries to*
24 *water rights or claims of interference with, diversion*
25 *or taking of water (including but not limited to*

1 *claims for injury to lands resulting from such dam-*
 2 *ages, losses, injuries, interference with, diversion, or*
 3 *taking) in the Rio Grande mainstream or its tribu-*
 4 *taries or for lands within the Taos Valley that ac-*
 5 *crued at any time up to and including the Enforce-*
 6 *ment Date; and*

7 *(4) all claims against the State of New Mexico,*
 8 *its agencies, or employees relating to the negotiation*
 9 *or the adoption of the Settlement Agreement.*

10 *(b) CLAIMS BY THE PUEBLO AGAINST THE UNITED*
 11 *STATES.—The Pueblo, on behalf of itself and its members,*
 12 *is authorized to execute a waiver and release of—*

13 *(1) all claims against the United States, its*
 14 *agencies, or employees relating to claims for water*
 15 *rights in or water of the Taos Valley that the United*
 16 *States acting in its capacity as trustee for the Pueblo*
 17 *asserted, or could have asserted, in any proceeding,*
 18 *including but not limited to in New Mexico v. Abeyta*
 19 *and New Mexico v. Arellano, Civil Nos. 7896–BB*
 20 *(U.S. 6 D.N.M.) and 7939–BB (U.S. D.N.M.) (consoli-*
 21 *dated);*

22 *(2) all claims against the United States, its*
 23 *agencies, or employees relating to damages, losses, or*
 24 *injuries to water, water rights, land, or natural re-*
 25 *sources due to loss of water or water rights (including*

1 *but not limited to damages, losses or injuries to hunt-*
2 *ing, fishing, gathering, or cultural rights due to loss*
3 *of water or water rights, claims relating to inter-*
4 *ference with, diversion or taking of water or water*
5 *rights, or claims relating to failure to protect, ac-*
6 *quire, replace, or develop water, water rights or water*
7 *infrastructure) in the Rio Grande mainstream or its*
8 *tributaries or within the Taos Valley that first ac-*
9 *crued at any time up to and including the Enforce-*
10 *ment Date;*

11 *(3) all claims against the United States, its*
12 *agencies, or employees for an accounting of funds ap-*
13 *propriated by the Act of March 4, 1929 (45 Stat.*
14 *1562), the Act of March 4, 1931 (46 Stat. 1552), the*
15 *Act of June 22, 1936 (49 Stat. 1757), the Act of Au-*
16 *gust 9, 1937 (50 Stat. 564), and the Act of May 9,*
17 *1938 (52 Stat. 291), as authorized by the Pueblo*
18 *Lands Act of June 7, 1924 (43 Stat. 636), and the*
19 *Pueblo Lands Act of May 31, 1933 (48 Stat. 108),*
20 *and for breach of trust relating to funds for water re-*
21 *placement appropriated by said Acts that first ac-*
22 *crued before the date of enactment of this Act;*

23 *(4) all claims against the United States, its*
24 *agencies, or employees relating to the pending litiga-*
25 *tion of claims relating to the Pueblo's water rights in*

1 *New Mexico v. Abeyta and New Mexico v. Arellano,*
 2 *Civil Nos. 7896–BB (U.S. 6 D.N.M.) and 7939–BB*
 3 *(U.S. D.N.M.) (consolidated); and*

4 *(5) all claims against the United States, its*
 5 *agencies, or employees relating to the negotiation,*
 6 *Execution or the adoption of the Settlement Agree-*
 7 *ment, exhibits thereto, the Final Decree, or this Act.*

8 *(c) RESERVATION OF RIGHTS AND RETENTION OF*
 9 *CLAIMS.—Notwithstanding the waivers and releases author-*
 10 *ized in this Act, the Pueblo on behalf of itself and its mem-*
 11 *bers and the United States acting in its capacity as trustee*
 12 *for the Pueblo retain—*

13 *(1) all claims for enforcement of the Settlement*
 14 *Agreement, the Final Decree, including the Partial*
 15 *Final Decree, the San Juan-Chama Project contract*
 16 *between the Pueblo and the United States, or this Act;*

17 *(2) all claims against persons other than the*
 18 *Parties to the Settlement Agreement for damages,*
 19 *losses or injuries to water rights or claims of inter-*
 20 *ference with, diversion or taking of water rights (in-*
 21 *cluding but not limited to claims for injury to lands*
 22 *resulting from such damages, losses, injuries, inter-*
 23 *ference with, diversion, or taking of water rights)*
 24 *within the Taos Valley arising out of activities occur-*

1 *ring outside the Taos Valley or the Taos Valley*
2 *Stream System;*

3 (3) *all rights to use and protect water rights ac-*
4 *quired after the date of enactment of this Act;*

5 (4) *all rights to use and protect water rights ac-*
6 *quired pursuant to State law, to the extent not incon-*
7 *sistent with the Partial Final Decree and the Settle-*
8 *ment Agreement (including water rights for the land*
9 *the Pueblo owns in Questa, New Mexico);*

10 (5) *all claims relating to activities affecting the*
11 *quality of water including but not limited to any*
12 *claims the Pueblo might have under the Comprehen-*
13 *sive Environmental Response, Compensation, and Li-*
14 *ability Act of 1980 (42 U.S.C. 9601 et seq.) (includ-*
15 *ing but not limited to claims for damages to natural*
16 *resources), the Safe Drinking Water Act (42 U.S.C.*
17 *300f et seq.), the Federal Water Pollution Control Act*
18 *(33 U.S.C. 1251 et seq.), and the regulations imple-*
19 *menting those Acts;*

20 (6) *all claims relating to damages, losses, or in-*
21 *juries to land or natural resources not due to loss of*
22 *water or water rights (including but not limited to*
23 *hunting, fishing, gathering, or cultural rights); and*

24 (7) *all rights, remedies, privileges, immunities,*
25 *powers, and claims not specifically waived and re-*

1 *leased pursuant to this Act and the Settlement Agree-*
2 *ment.*

3 *(d) EFFECT OF SECTION.—Nothing in the Settlement*
4 *Agreement or this Act—*

5 *(1) affects the ability of the United States acting*
6 *in its sovereign capacity to take actions authorized by*
7 *law, including but not limited to any laws relating*
8 *to health, safety, or the environment, including but*
9 *not limited to the Federal Water Pollution Control*
10 *Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water*
11 *Act (42 U.S.C. 300f et seq.), the Comprehensive Envi-*
12 *ronmental Response, Compensation, and Liability*
13 *Act of 1980 (42 U.S.C. 9601 et seq.), the Solid Waste*
14 *Disposal Act (42 U.S.C. 6901 et seq.), and the regula-*
15 *tions implementing such Acts;*

16 *(2) affects the ability of the United States to take*
17 *actions acting in its capacity as trustee for any other*
18 *Indian tribe or allottee;*

19 *(3) confers jurisdiction on any State court to—*

20 *(A) interpret Federal law regarding health,*
21 *safety, or the environment or determine the du-*
22 *ties of the United States or other parties pursu-*
23 *ant to such Federal law; or*

24 *(B) conduct judicial review of Federal agen-*
25 *cy action; or*

1 (4) *waives any claim of a member of the Pueblo*
 2 *in an individual capacity that does not derive from*
 3 *a right of the Pueblo.*

4 (e) *TOLLING OF CLAIMS.—*

5 (1) *IN GENERAL.—Each applicable period of*
 6 *limitation and time-based equitable defense relating*
 7 *to a claim described in this section shall be tolled for*
 8 *the period beginning on the date of enactment of this*
 9 *Act and ending on the earlier of—*

10 (A) *December 31, 2016; or*

11 (B) *the Enforcement Date.*

12 (2) *EFFECT OF SUBSECTION.—Nothing in this*
 13 *subsection revives any claim or tolls any period of*
 14 *limitation or time-based equitable defense that ex-*
 15 *pired before the date of enactment of this Act.*

16 (3) *LIMITATION.—Nothing in this subsection pre-*
 17 *cludes the tolling of any period of limitations or any*
 18 *time-based equitable defense under any other applica-*
 19 *ble law.*

20 **SEC. 12. INTERPRETATION AND ENFORCEMENT.**

21 (a) *LIMITED WAIVER OF SOVEREIGN IMMUNITY.—*
 22 *Upon and after the Enforcement Date, if any Party to the*
 23 *Settlement Agreement brings an action in any court of com-*
 24 *petent jurisdiction over the subject matter relating only and*
 25 *directly to the interpretation or enforcement of the Settle-*

1 *ment Agreement or this Act, and names the United States*
 2 *or the Pueblo as a party, then the United States, the Pueblo,*
 3 *or both may be added as a party to any such action, and*
 4 *any claim by the United States or the Pueblo to sovereign*
 5 *immunity from the action is waived, but only for the lim-*
 6 *ited and sole purpose of such interpretation or enforcement,*
 7 *and no waiver of sovereign immunity is made for any ac-*
 8 *tion against the United States or the Pueblo that seeks*
 9 *money damages.*

10 (b) *SUBJECT MATTER JURISDICTION NOT AF-*
 11 *FECTED.*—*Nothing in this Act shall be deemed as confer-*
 12 *ring, restricting, enlarging, or determining the subject mat-*
 13 *ter jurisdiction of any court, including the jurisdiction of*
 14 *the court that enters the Partial Final Decree adjudicating*
 15 *the Pueblo’s water rights.*

16 (c) *REGULATORY AUTHORITY NOT AFFECTED.*—*Noth-*
 17 *ing in this Act shall be deemed to determine or limit any*
 18 *authority of the State or the Pueblo to regulate or admin-*
 19 *ister waters or water rights now or in the future.*

20 **SEC. 13. DISCLAIMER.**

21 *Nothing in the Settlement Agreement or this Act shall*
 22 *be construed in any way to quantify or otherwise adversely*
 23 *affect the land and water rights, claims, or entitlements to*
 24 *water of any other Indian tribe.*

Union Calendar No. 232

11TH CONGRESS
2^D Session

H. R. 3254

[Report No. 111-395]

A BILL

To approve the Taos Pueblo Indian Water Rights
Settlement Agreement, and for other purposes.

JANUARY 12, 2010

Reported with an amendment, committed to the Com-
mittee of the Whole House on the State of the Union,
and ordered to be printed